UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TAKANORI NISHIMURA, KEIGO IHARA,
TAKAO YOSHIMINE, JUNKO FUKUDA,
and TAKAHIKO SUEYOSHI

Appeal 2007-1569
Application 10/089,083[1]
Technology Center 2100

Decided: September 5, 2007

Before: ALLEN R. MACDONALD, JAY P. LUCAS, and
JOHN A. JEFFERY, *Administrative Patent Judges.*

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal from a final rejection of claims 1 to 3, 5 to 12 and 14 to 27[2] under authority of 35 U.S.C. § 134. The Board of Patent Appeals

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[1] Application filed April 10, 2002. Application 10/089,083 is a U.S. National Stage entry of PCT/JP01/07419, filed August 29, 2001. Priority is claimed to Japanese application 2000-264561 filed August 31, 2000. The real party in interest is Sony Corporation.

[2] Claims 4 and 13 are cancelled.

and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b), and we heard the appeal on August 7, 2007.

Appellants' invention relates to a method, apparatus and program for distributing content from one user to a server, and then across the Internet to a waiting plurality of users. Because this content can be live distribution of moving image data, i.e. high volume video signals, a reservation system is claimed that reserves, for a certain period of time, access to the streaming server that will distribute the content. The reservation is secured by an authentication token generated by a reservation control center, given to and stored in the user's personal computer (PC), and then used to enforce the reservation at the appointed time. In the words of the Appellant:

> On the other hand, when the above-described live distribution is performed, the content creator needs to send moving image data to the streaming server in real time, and it is necessary to secure a communication path to transmit moving image data between the streaming server and a personal computer (hereinafter referred to as "PC") of the content distributor for a period during the live distribution. This limits the number of content that can be live-distributed using the streaming server during the same period and in a time zone to which many applicants rush, there is a problem that the content distributor who has been preparing for live distribution in the time zone cannot perform live distribution in that time zone. In order to prevent such a problem, it is possible to use the streaming server based on a reservation system to insure efficient use of the streaming server to perform live distribution.

(Specification, Page 3)

Claim 1 is indicated as being the only claim being appealed, and is representative of the invention. All the claims will stand or fall together. (Brief, page 2, top)

1. A method of reserving and accessing resources in a distribution server, comprising:

a reservation requesting step of sending reservation request information including a desired service time for distributing content using said distribution server from a user terminal apparatus to a reservation control apparatus via a first network;

a reservation accepting step of creating authentication information used for an accepted reservation and sending the reservation setting information including said authentication information from said reservation control apparatus to said user terminal apparatus via the first network when the reservation for use of said distribution server during said desired service time included in said reservation request information is accepted;

a storing step of writing and storing said authentication information included in said reservation setting information sent from said reservation control apparatus in a predetermined storage area of said user terminal apparatus;

a service requesting step of reading and sending said authentication information stored in said predetermined storage area from said user terminal apparatus when said user terminal apparatus accesses and uses said distribution server based on said reservation;

an authenticating step of deciding whether the use of said distribution server by said user terminal apparatus is accepted based on said authentication information sent from said user terminal apparatus;

transmitting content from the user terminal apparatus to the distribution server via a second network;

broadcasting, by the content distribution server, said content data received from said user terminal apparatus over said first network.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Nakamura	US 5,913,039	Jun. 15, 1999
Wiser	US 6,868,403 B1	Mar. 15, 2005

Rejection:

Claims 1 to 3, 5 to 12, and 14 to 27 stand rejected under 35 U.S.C. 103(a) for being obvious over Nakamura in view of Wiser.

Appellants contend that the claimed subject matter is not rendered obvious by Nakamura in view of Wiser, for failure of the references to teach limitations of the claim, and for lack of motivation to combine the references. The Examiner contends that each of the claims is properly rejected.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).[3]

We reverse the rejection.

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[3] Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group, except as will be noted in this opinion. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See In re Young,* 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991).

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue turns on whether the Nakamura reference or the Wiser reference discloses the claimed transmitting steps, and the first and second network.

FINDINGS OF FACT

Findings with respect to the rejection of claim 1.

1. Appellants have invented a method for reserving and accessing resources in a distribution server (#102, Figure 1) supplying video content (Specification, page 14) to a series of client PCs (#107, Figure 1). The distributing user, at his own PC #106, requests a reservation for a certain time from a Server Reservation Control Center (#101, Figure 1) across a first network, the Internet, and receives back authentication information through the same network. That information is stored on the distributing user's PC. At the reserved time, the user presents his authorization, and transmits his content) over a second network (#108, Figure 1) from his PC to the streaming distribution server (#102, Figure 1). The distribution server then distributes the content to the ultimate users across the first network. (Brief, pages 2 and 3).

2. The Nakamura reference (See Figure 1) distributes video content from Data Stream Storage #121 to a series of users,

101, 102, etc. The user first requests a schedule of video programs, Figure 2, which schedule is stored on the user's PC. (Column 1, bottom). The user selects from the schedule certain videos and the time to have them distributed to him. (Column 2, middle). This order is sent to the server, which sends the selected videos to the user at the requested time. (Column 2, middle).

3. Notice is taken that the Nakamura network 130 "comprises a heavy circuit for transmitting data streams from server 120 to each client end [sic]a thin line for transmitting control information from each client to server 120." (Column 1, lines 36 *ff*).

4. Wiser teaches an on-line music distribution system which allows users to authenticate themselves by payment of a fee to receive music files over the Internet. (Column 3, lines 20 to 30).

PRINCIPLES OF LAW

On appeal, Appellant bears the burden of showing that the Examiner has not established a legally sufficient basis for the rejection of the claims.

"In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. *See In re*

King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

ANALYSIS

The Examiner applied Nakamura and Wiser to each element of the claim (Answer, pages 4 to 5) and established a prima facie case for the claim being obvious over the cited art.

To this rejection, the Appellants raised three objections: First, "Nakamura ... fails to teach or suggest that content is transmitted from the client (101) to the server (120) and broadcasted by the content distribution server, as recited in independent Claim 1." (Brief, page 7, Reply brief, page 4).

The claim requires "transmitting content from the user terminal apparatus to the distribution server." Content is defined in the Specification on pages 14 to 15: "...the user of the user PC 106 sends content data (e.g., video data, etc. taken from music live) taken by a digital camera, etc. to the streaming server 102...." In Nakamura, and also in Wiser, we find that the content does not travel in that claimed direction from the first user's terminal. Control data does, but the content data in Nakamura comes from the server down to the user. We thus agree with the Appellants that this teaching is not shown in the prior art.

Appellants' second objection is that the claim requires that the content be sent "from the user terminal apparatus to a distribution server via a second network" to be later broadcast over the first network. (Brief, page 8 middle). Though Nakamura appears to have one network #130 in Figure 1,

on closer reading we discover (Finding of Fact #3 above) that there are two circuits included in the Nakamura network, including a heavy circuit. However, Nakamura describes the heavy circuit as "transmitting data streams from server 120 to each client." (Column 1, lines 36 to 37). In contrast, claim 1, as well as the other independent claims, requires transmitting content from the user terminal to the distribution server via a second network, which is not taught by the prior art.

Appellants' third argument, that the references taught no motivation to combine, need not be addressed in this opinion as the first two objections to the prima facie case are dispositive of the issue. The rejection cannot be sustained.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner erred in rejecting claim 1, and by similar reasoning, claims 2, 3, 5 to 12, and 14 to 27. The rejection of those claims is reversed.

DECISION

The Examiner's rejection of claims 1 to 3, 5 to 12, and 14 to 27 is reversed.

REVERSED

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314